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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

15 CR 854 (LTS)

5 ALI HAMILTON, JEAN BAPTISTE  
6 LESSAGE, DAVID BUCKHANON,  
7 JAMMAL LINDO, JALEEL BARON,  
8 KYLE MULLINGS,

Defendants.

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9  
10 New York, N.Y.  
11 March 15, 2017  
12 4:15 p.m.

13 Before:

14 HON. LAURA TAYLOR SWAIN,

15 District Judge  
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APPEARANCES

JOON H. KIM,  
Acting United States Attorney for the  
Southern District of New York

SCOTT HARTMAN

JASON M. SWERGOLD

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SANFORD N. TALKIN

Attorney for Defendant Hamilton

MATTHEW DANIEL MYERS

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ELIZABETH E. MACEDONIO

Attorney for Defendant Buckhanon

JAMES E. NEUMAN

Attorney for Defendant Lindo

ELIZABETH E. MACEDONIO (Standing in for Mark. S. DeMarco)

Attorney for Defendant Baron

SANFORD N. TALKIN (Standing in Stewart L. Orden)

Attorney for Defendant Mullings

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1 THE DEPUTY CLERK: This case is United States of  
2 America versus Hamilton, et al.

3 THE COURT: Counsel, would you state your appearances,  
4 please.

5 MR. SWERGOLD: Good afternoon, your Honor. Jason  
6 Swergold, Jessica Lonergan, and Scott Hartman, for the  
7 government.

8 MR. HARTMAN: Good afternoon, Judge.

9 MS. LONERGAN: Good afternoon.

10 THE COURT: Good afternoon, Mr. Swergold,  
11 Ms. Lonergan, and Mr. Hartman.

12 MR. TALKIN: Good afternoon, your Honor. Sam Talkin,  
13 for Mr. Hamilton, who is the only person in the dark shirt in  
14 the jury box.

15 I am also standing in for Mr. Orden, for Mr. Mullings,  
16 who is the individual closest to you in the jury box.

17 THE COURT: Good afternoon, Mr. Mullings,  
18 Mr. Hamilton. Good afternoon, Mr. Talkin.

19 MR. MYERS: Matthew Myers, for -- it says Jean  
20 Baptiste Lessage, defendant two on the indictment. His true  
21 name is Lessage Jean Baptiste, but he's here, seat number two.

22 THE COURT: Good afternoon, Mr. Jean Baptiste.

23 And good afternoon, Mr. Myers.

24 MR. MYERS: Good afternoon.

25 MS. MACEDONIO: Good afternoon, your Honor. Elizabeth

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1 Macedonio. With me at counsel table is Carla Sanderson. She's  
2 my mentee in the Eastern District of New York, so she's going  
3 to be participating, with the Court's permission.

4 Also, I am covering for Mark DeMarco, who's on trial  
5 next-door, in front of Judge Preska, and he represents Jaleel  
6 Baron. I've spoken to Mr. Baron, and he consents to me  
7 representing him for today's purposes.

8 THE COURT: And your regular client in this case is  
9 Mr. Buckhanon?

10 MS. MACEDONIO: Yes.

11 THE COURT: So they're both present and seated in the  
12 jury box?

13 Good afternoon, Mr. Buckhanon and Mr. Baron.

14 DEFENDANTS: Good afternoon.

15 THE COURT: And good afternoon, Ms. Macedonio and  
16 Ms. Sanderson.

17 MR. NEUMAN: Good afternoon. James Neuman, for Jammal  
18 Lindo, who's in the jury box as well.

19 DEFENDANT LINDO: Good afternoon.

20 THE COURT: Good afternoon, Mr. Lindo. And good  
21 afternoon, Mr. Neuman.

22 And greetings to the family members who are here in  
23 court today. Thank you, all, for coming to court.

24 Mr. Swergold, may I have a status report, please?

25 MR. SWERGOLD: Yes, your Honor. This is the first

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1 appearance before your Honor on this, which is the second  
2 superseding indictment in this case, that originally just  
3 charged Mr. Hamilton but now charges, including Mr. Hamilton,  
4 eight total defendants. Except --

5 THE COURT: Everyone has been arraigned on the second  
6 superseder.

7 MR. SWERGOLD: Everybody here has been arraigned on  
8 the second superseder. There was one defendant arrested in the  
9 Eastern District of Pennsylvania and is on the way up here on  
10 the marshals' transport. He was presented only in the Eastern  
11 District, so when he arrives here, he will be re-presented here  
12 and can be arraigned as well. And then there's an eighth  
13 defendant who is still at large.

14 And all of the defendants, except for Mr. Hamilton,  
15 were arrested on March 8th, into the evening of March 8th into  
16 March 9th. Everybody sitting here appeared before Judge Ellis  
17 on March 9th and was arraigned on this second superseding  
18 indictment. And the second superseding indictment --

19 THE COURT: Including Mr. Hamilton?

20 MR. SWERGOLD: Including Mr. Hamilton.

21 So, everybody except Mr. Hamilton was presented and  
22 arraigned, and Mr. Hamilton was just arraigned because he  
23 already had counsel and was in custody.

24 So, the second superseding indictment builds on the  
25 earlier indictment against Mr. Hamilton and now includes --

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1 Count One is a racketeering conspiracy from 2009 to  
2 February 2017 for an enterprise that the government has  
3 referred to as the Beach Avenue Crew, which was a group that  
4 sold crack cocaine in Beach Avenue and the surrounding streets  
5 in the Bronx, from approximately 2009 to February 2017, and  
6 used violence to enforce their drug-dealing territory.

7 Some of those acts of violence are charged in this  
8 indictment. So, for example, Count Two is a violent act in the  
9 aid of racketeering against Mr. Hamilton for a May 2015  
10 shooting; Count Three is a VICAR against Mr. Jean Baptiste,  
11 charging Mr. Jean Baptiste, Mr. Lindo and Mr. Baron, from  
12 August 2016; then Count Four is a (b)(1)(A) narcotics  
13 conspiracy against all of the defendants; Count Five is  
14 firearms offense under 924(c) against all of the defendants;  
15 and then Count Six is one of the original charges against  
16 Mr. Hamilton, which is the felon-in-possession charge from his  
17 October 31st, 2015, arrest with a firearm.

18 THE COURT: Thank you.

19 So what arrangements have you made for discovery?

20 MR. SWERGOLD: The government is putting discovery  
21 together. It's going is to consist largely of social media;  
22 some jail calls; the contents of phones that were searched  
23 pursuant to a search warrant, and we'll produce the search  
24 warrant paperwork as well; NYPD files for certain acts of  
25 violence and any accompanying evidence that goes with it, like,

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1 for example, security footage from nearby buildings that caught  
2 portions of some of the shootings. For each of the defendants,  
3 we will be producing to them individually the paperwork from  
4 any of their prior arrests that would serve as part of the  
5 basis for the racketeering charge as well as their criminal  
6 histories and their marshal intake paperwork.

7 That's the bulk of the discovery for now.

8 THE COURT: Are there statements?

9 MR. SWERGOLD: There may be some statements, but to  
10 the extent there are, we'll produce them to the individual  
11 defendants. There's no Title 3 wiretap.

12 THE COURT: And no search warrants other than the  
13 seized telephones?

14 MR. SWERGOLD: I think there's one premises search  
15 warrant, not connected with the arrest but from an earlier  
16 time, on Beach Avenue.

17 THE COURT: When is it that you expect to be able to  
18 produce this discovery? And in what medium are you doing that?

19 MR. SWERGOLD: The government is going to produce  
20 everything it has right now, prior to April 17th, and we've  
21 talked about this with defense counsel.

22 THE COURT: Right now, prior to April 17th? That's a  
23 30-day period, so what do you mean?

24 MR. SWERGOLD: Sorry, I mean the discovery that it  
25 currently has in its possession and anything that we get in the

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1 next coming days, we will produce before April 17th, and we  
2 will continue to make rolling productions as we continue to  
3 investigate this crew and obtain additional evidence. So we  
4 will make this general production of everything that I've  
5 talked about as well as the production for the individual  
6 defendants, and our plan is to make sure we get it out to  
7 defendants before April 17th. We've already talked to defense  
8 counsel about hard drives that the defense counsel can provide  
9 to us so that we can load a copy for them, and then if they  
10 also give us a hard drive, we can load it for their client as  
11 well and provide it to MDC or MCC, for their client to view.

12 THE COURT: So, that's the means by which you are  
13 going to make it available to the clients in the facilities --

14 MR. SWERGOLD: Yes.

15 THE COURT: -- a hard drive that you will load?

16 MR. SWERGOLD: Yes.

17 THE COURT: Have you spoken with defense counsel about  
18 the period of time that defense counsel believe will be  
19 necessary for review of the discovery before we come back?

20 MR. SWERGOLD: We spoke to, I think, everyone or most  
21 of the defense counsel about possibly coming back in the middle  
22 of June, which would give them approximately two months to  
23 review all of the discovery that the government is going to  
24 produce.

25 THE COURT: Thank you.



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1 Do any defense counsel wish to be heard?

2 May I take it from that, that a mid-June next  
3 conference date is appropriate and at that time we can at least  
4 begin to talk about the thinking about motion practice and  
5 other such matters?

6 MR. TALKIN: Yes, Judge.

7 MS. MACEDONIO: Yes, your Honor.

8 THE COURT: I see all yeses and no nos from the  
9 defense counsel.

10 So, Ms. Ng, may I have a conference date in mid-June,  
11 please.

12 THE DEPUTY CLERK: Thursday, June 15th, 2017, at  
13 12:30.

14 THE COURT: Are all counsel available on June 15th at  
15 12:30?

16 MR. MYERS: Yes, your Honor.

17 MR. TALKIN: Yes, your Honor.

18 MS. MACEDONIO: Yes, your Honor.

19 MR. NEUMAN: Yes, your Honor, that's fine.

20 THE COURT: Very good. So the next conference is set  
21 for June 15th at 12:30 in the afternoon.

22 Is there a request for exclusion from speedy trial  
23 computations, of the time from now until June 15th?

24 MR. SWERGOLD: Yes, your Honor, so that the government  
25 can produce discovery and defense counsel and the defendants

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1 can review discovery and begin to contemplate any motions as  
2 well as the government and the individual defendants can engage  
3 in discussions to resolve this case short of trial.

4 THE COURT: Any objection?

5 MR. TALKIN: No, your Honor.

6 MR. MYERS: No, your Honor.

7 MS. MACEDONIO: No, your Honor.

8 MR. NEUMAN: Your Honor.

9 THE COURT: The request is granted. I find, for the  
10 reasons summarized by Mr. Swergold, that the ends of justice  
11 served by the granting of an exclusion from speedy trial  
12 computations, for the period from today's date through  
13 June 15th, 2017, outweigh the best interests of the public and  
14 of each defendant in a speedy trial. Accordingly, that time  
15 period is excluded prospectively.

16 Mr. Swergold, I neglected to ask you about victim  
17 identification and notification arrangements.

18 MR. SWERGOLD: Your Honor, the government going to  
19 work with our victim witness coordinators to notify victims as  
20 soon as possible.

21 THE COURT: All right. Thank you for that  
22 undertaking.

23 Counsel, is there anything else that we need to take  
24 up together this afternoon?

25 MR. NEUMAN: Yes, your Honor. Just briefly, my

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1 client, Jammal Lindo, has a medical issue. I brought this up  
2 at the time of the arraignment. His jaw is wired shut, so he  
3 cannot eat solid food. I think a medical order was put in  
4 place at the time, but he just now informed me that they're not  
5 giving him enough of these protein shakes, which is what he  
6 needs to eat. They're giving it to him in the morning and at  
7 lunchtime but not at -- so he's not able to eat anything at  
8 dinner. So --

9 THE COURT: Is he at the MCC or the MDC?

10 MR. NEUMAN: MDC.

11 THE COURT: Mr. Swergold, can you get on the phone  
12 right away to the counsel's office at the MDC?

13 MR. SWERGOLD: Yes, your Honor.

14 THE COURT: And then let Mr. Neuman and me know if  
15 they say anything other than "protein shakes are coming for  
16 dinner every night."

17 MR. SWERGOLD: Understood.

18 THE COURT: So, if necessary, I'll put an order in but  
19 usually the counsel's office are helpful in straightening  
20 things out like this.

21 MR. NEUMAN: Thank you.

22 THE COURT: Anything else, Ms. Macedonio?

23 MS. MACEDONIO: Your Honor, is it the Court's practice  
24 to hear bail applications yourself or do you refer them to the  
25 magistrate judge?

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1           THE COURT: They should go to the magistrate in the  
2 first instance.

3           MS. MACEDONIO: Thank you.

4           THE COURT: Thank you. All right, then I would ask  
5 that the marshals permit the gentlemen to acknowledge their  
6 family members as they leave the courtroom, and I thank you for  
7 making that accommodation.

8           And with that, we are adjourned. I also just ask that  
9 everyone follow the marshals' instructions about who moves  
10 when.

11          Thank you. Keep well, everyone.

12                   \* \* \*